IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.656 OF 2005

Rajesh Ramprasad Poddar & Anr.	...	Petitioners
Vs.		
The Hon'ble Principal Judge & Anr.	...	Respondents

Mr. Niranjan Pandit with Tripti Kapadia i/b M/s. Joy Legal Consultants for the petitioners.

Mr. Vaishnav i/b N.N. Vaishnav & Co. for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 24TH FEBRUARY, 2005.

P.C.:-

1. In this writ petition, order dated 2/11/2004 passed by the principal judge of the family court on Interim Application No.171 of 2004 in M.J. Petition No.D-63 of 2004 is under challenge. By the impugned order, the learned judge has held that the family court has jurisdiction to entertain a petition, wherein a declaration is sought that the adoption deed is void and consequential relief of custody of the child is prayed for.

2. I have heard, at considerable length, Mr. Pandit, the learned counsel appearing for the petitioners. Mr. Pandit reiterated the contentions taken up in the application filed by the petitioners in the trial court.

He contended that unless and until the deed of adoption is set aside and cancelled by a civil court having jurisdiction, custody of the child cannot be applied for. He further submitted that under section 31 of the Specific Relief Act, a written instrument can be got cancelled only from the civil court. It is only a civil court which can declare that such an instrument is void and the family court cannot deal with such a petition. He further submitted that such a petition is not covered by section 7(g) of the Family Courts Act, 1984 because it does not involve a matrimonial dispute. The learned counsel further submitted that the family court has failed to appreciate the scope of its jurisdiction. He also submitted that the reliance placed by the family court on the judgment of the Supreme Court in **Jai Prakash Khadria v. Shyam Sunder Agarwalla and another, (2000) 6 SCC 598** and on the judgment of the learned single judge of this court in **Smt. Shahnaz Shaharyari alias Shirin Shaharyari, Nagpur v. Dr. Vijay Yeshwant Gawande, Bombay, AIR 1995 Bom. 30** is misplaced. He contended that so far as the judgment in **Jai Prakash Khadria's case (supra)** is concerned, it does not pertain to the jurisdiction at all and, it was wrong on the part of the learned judge to rely on it. The learned counsel contended that so far as the judgment in **Smt. Shahnaz's case (supra)** is concerned, it is also not on the point involved in the present case. Some portion of this judgment was torn out of context and relied upon by the family court. Relying on the judgments of the Supreme

Court in **M/s. Goodyear India Ltd. v. State of Haryana and another, AIR 1990 SC 781 and M/s. Orient Paper and Industries Ltd. and another, etc. etc. v. State of Orissa and others, AIR 1991 SC 672**, the leaned counsel contended that a precedent is only an authority for what it actually decides and not on what may even logically follow from it. The learned counsel contended that the trial court lost sight of this important principle and wrongly relied on the judgments, which are not even remotely applicable to the facts of this case.

3. Mr. Pandit also contended that so far as the prayer for custody is concerned, it is merely an incidental prayer. The basic prayer is for a declaration that the adoption deed is void and such a petition can never be dealt with by the family court and the proper course would be to file a petition in a civil court.

4. As against this, the learned counsel for the respondent submitted that the impugned judgment does not merit any interference from this court as it is based on correct legal principles.

5. In my opinion, it is not necessary to refer to the judgments on which reliance is placed by the trial court. A bare reading of the provisions of the Family Courts Act would indicate that there are no fetters on the powers of the family court prohibiting it from dealing with such a

petition. The preamble of the Family Courts Act reads thus:

> "An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith."

It is clear, therefore, that the family courts are created to deal with disputes relating to marriage and family affairs and for matters connected therewith.

6. It is also necessary to have a look at section 7 of the Family Courts Act. Section 7 reads thus:

> "7. Jurisdiction. - (1) Subject to the other provisions of this Act, a Family Court shall -
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> (a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and
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> (b) be deemed, for the purposes of

exercising such jurisdiction under such law, to be a district Court, or as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation. - The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely :

(a) a suit or proceeding between the parties to a marriage for decree of a nullity marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or

injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody-of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise;

(a) the jurisdiction exercisably by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

7. The present case would be covered by section 7(1)(b)(g). The words "in relation to" found in section 7(1)(b)(g) have a very vide connotation and, in my view, the family court can entertain the petition of present

nature as it is covered by this provision. It is true that under section 31 of the Specific Relief Act, an instrument can be got cancelled as being void from a civil court but I see no provision in the Family Courts Act or in any other Act which prohibits the family court from dealing with such a petition. The family court is also a civil court and when no provisions are pointed out to me which expressly or even impliedly bar the family court from taking cognizance of the said petition, it is not possible to read into the Family Courts Act any such bar. Though, the prayer of custody is an incidental prayer, in the facts of the present case, it would strengthen the view taken by the family court that if the question of interim custody arises, the family court which has the benefit of counsellors, child specialists and physchiatrists would be in a better position to deal with custody application. This, of course, is not the only reason for me to conclude that the family court has jurisdiction. I have clarified that the Family Courts Act contain no fetters on its powers to deal with such petitions and no other provisions of law prohibit the family court from dealing with such petitions.

8. It is also necessary to have a look at section 20 of the Family Courts Act which reads thus.

> 20. Act to have overriding effect.- The provisions of this Act shall have effect notwithstanding anything inconsistent

therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

Section 20 gives an overriding effect to the Family Courts Act. In view of the above, the family court cannot be faulted for having taken a view that it has jurisdiction. The petition is therefore rejected.

9. Mr. Pandit, the learned counsel for the petitioners states that the proceedings in the trial court be stayed for four weeks as the petitioners want to challenge this order in the Supreme Court. The learned counsel for the respondents objects. In the circumstances of the case, the proceedings in the family court are stayed for a period of four weeks from today.

10. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)